

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WOODROW WILSON, #145772,

Petitioner,

v.

CASE NO. 5:13-CV-11904
HONORABLE JOHN CORBETT O'MEARA

PAUL KLEE,

Respondent.

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Petitioner's motion for summary judgment concerning his pending petition for a writ of habeas corpus, which was filed on April 29, 2013. Respondent has not yet filed an answer to the petition or the state court record. Those materials are due on November 4, 2013. Petitioner filed the instant motion on June 20, 2013, essentially seeking habeas relief on his claims.

Federal Rule of Civil Procedure 56(c) provides that summary judgment is proper:

If the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c). Although Petitioner has filed his petition, Respondent has not yet filed an answer or the state court record. Based upon an initial review of the petition, the Court cannot conclude that there is no genuine issue of material fact or that Petitioner is entitled to judgment as a matter of law. Furthermore, a default judgment is unavailable in a federal habeas proceeding. *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970). The Court will address the merits of the case in

a forthcoming opinion. Accordingly, the Court **DENIES** Petitioner's motion for summary judgment.

IT IS SO ORDERED.

s/John Corbett O'Meara
United States District Judge

Date: July 3, 2013

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, July 3, 2013, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager